

## FIRST DIVISION

[ G.R. NO. 152214, September 19, 2006 ]

**EQUI-ASIA PLACEMENT, INC., PETITIONER, VS. DEPARTMENT OF FOREIGN AFFAIRS (DFA) REPRESENTED BY THE HON. DOMINGO L. SIAZON, JR., SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), REPRESENTED BY HON. BIENVENIDO LAGUESMA, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari* of the Decision dated 4 October 2001<sup>[1]</sup> and Resolution dated 18 February 2002 of the Court of Appeals in CA-G.R. SP No. 61904. The Decision denied petitioner's petition for *certiorari* while the Resolution denied its Motion for Reconsideration.

The Court of Appeals summarized the facts of this case in this wise:

On September 16, 2000, Manny dela Rosa Razon, a native of Lemery, Batangas and an overseas Filipino worker, died of acute cardiac arrest while asleep at the dormitory of the Samsong Textile Processing Factory in South Korea. Informed thereof, the Philippine Overseas Labor Office (POLO) at South Korea immediately relayed the incident to the Philippine Embassy in South Korea. Forthwith, the [Labor] Attaché of the Philippine Embassy dispatched a letter to Eleuterio N. Gardiner, administrator of the Overseas Workers Welfare Administration (OWWA). The letter reads:

"VERY URGENT, POLO has recently received a report that OFW Manny dela Rosa RAZON, an undocumented worker, died last Saturday, 16 September, from an apparent pancreatic attack or "bangungot."

According to the verbal reports of Moises and Ronald Recarde, Manny's co-workers, he was found already lifeless inside their quarters at around 11:00 in the morning of the above date. They rushed him to Uri Hospital where the Doctor declared him dead on arrival.

Per information gathered, the deceased is single, 29 years old, from Bukal, Lemery, Batangas. His next-of-kins are Mrs. Rowena Razon (Auntie) and Mr. Razon (Uncle) with telephone number (043)411-2308.

POLO is awaiting signed statements from the aforementioned workers who promised to send it by fax this afternoon.

We are also coordinating with the deceased's employer for documentation requirements and financial assistance for the repatriation of the remains.

We will highly appreciate if Home Office could advise the next-of-kins of the urgent need to issue a Special Power of Attorney (SPA) to facilitate the repatriation requirements of the subject.

In anticipation of the next-of-kins' likely move to seek financial assistance from OWWA for the repatriation of their loved [one], please be advised in advance that we will need about US\$4,000.00 to repatriate the cadaver (to include hospital and morgue costs) to Manila. xxx"

In turn, the OWWA, through Atty. Cesar L. Chavez, indorsed the matter, for appropriate action, to Director R. Casco of the Welfare Employment Office of the Philippine Overseas Employment Administration (WEO-POEA).

Upon verification by the WEO-POEA on its data base, it was discovered that Manny Razon was recruited and deployed by petitioner Equi-Asia Placement, Inc., and was sent to South Korea on April 3, 2000 to work-train at Yeongjin Machinery, Inc. Thereupon, POEA addressed the herein first assailed telegram- directive dated September 22, 2000 to the President/General Manager of the petitioner. We quote the telegram:

"PLEASE PROVIDE PTA [Prepaid Ticket Advice] FOR THE REPATRIATION OF REMAINS AND BELONGINGS OF OFW MANNY DELA ROSA RAZON AS PER REQUEST OF PHILIPPINE EMBASSY, KOREA, YOU CAN COORDINATE WITH YOUR FOREIGN EMPLOYER AND TO WAD/OWWA (MLA) AS REGARDS TO THIS MATTER. YOU ARE GIVEN TWO (2) DAYS FROM RECEIPT HEREOF WITHIN WHICH TO PROVIDE SAID TICKET AND ASSISTANCE, KINDLY SUBMIT YOUR REPORT TO ASSISTANCE AND WELFARE DIVISION (AWD), 2/F POEA, FAILURE TO DO SO WILL CONSTRAIN US TO IMPOSE APPROPRIATE SANCTION UNDER OUR RULES"

Responding thereto, petitioner, thru its President Daniel Morga, Jr., faxed on September 26, 2000 the following message to the Assistance and Welfare Division of the POEA:

"In connection with your telegram, dated 09/22/2000, requiring us to report the circumstances surrounding the death of OFW MANNY DELA ROSA RAZON in Korea and requesting us to issue a PTA, etc., for the repatriation of the remains of said OFW, this is to report to your good office the following:

1. The deceased was deployed by our agency on April 3, 2000 to Yeongjin Machine Company in South Korea;

2. He violated his employment/training/dispatching contracts on June 25, 2000 by unlawfully escaping/running away (TNT) from his company assignment without prior KFSMB authorization and working/staying in unknown company/place;

3. He allegedly died of "*bangungot*" thereafter;

In view thereof, we cannot heed your requests as embodied in your telegram. However, his relatives can avail of the benefits provided for by OWWA in cases involving undocumented/illegal Filipino workers abroad.

Trusting for your kind understanding"

On the same date - September 26, 2000 - Director Ricardo R. Casco of the WEO-POEA sent to the petitioner the herein second assailed letter-directive, which pertinently reads:

"We have received a copy of your fax message dated 26 September 2000 as regards to your response to our request for PTA for aforesaid deceased OFW. Nevertheless, may we remind you that pursuant to Sections 52, 53, 54 and 55 of the Implementing Rules Governing RA 8042, otherwise known as the Migrant Workers and Overseas Filipino Act of 1995, the repatriation of OFW, his/her remains and transport of his personal effects is the primary responsibility of the principal or agency and to immediately advance the cost of plane fare without prior determination of the cause of worker's repatriation. The Rules further provide for the procedure to be followed in cases when the foreign employer/agency fails to provide for the cost of the repatriation, compliance of which is punishable by suspension of the license of the agency or such sanction as the Administration shall deem proper. Hence, you are required to provide the PTA for the deceased OFW in compliance with the requirement in accordance with R.A. 8042. You are given forty-eight (48) hours upon receipt hereof within which to provide said ticket. Failure in this regard will constrain us to impose the appropriate sanction under our rules."

On September 27, 2000, petitioner wrote back Director Ricardo R. Casco, thus:

"In connection with your fax letter dated September 26, 2000, re: the repatriation of the remains of the deceased, ex-trainee (OFW) MANNY DELA ROSA RAZON, please be informed that the provisions of Section 53 as well as, and in relation to, Section 55 of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 on the matters covering the following:

1. The responsibility of the agency to advance the cost of plane fare without prior determination of the cause of the deceased worker's termination.
2. The recovery of the same costs from the estate of the dead worker before the NLRC.
3. The action to be imposed by POEA for non-compliance therewith within 48 hours are violative of due process and/or the principle on due delegation of power.

This is so because Sec. 15 of R.A. 8042 clearly contemplates prior notice and hearing before responsibility thereunder could be established against the agency that sets up the defense of sole fault - in avoidance of said responsibility -. Besides, the sections in question unduly grant the powers to require advance payment of the plane fare, to impose the corresponding penalty of suspension in case of non-compliance therewith, within 48 hours and to recover said advance payment from the dead worker's estate upon the return of his remains to the country before the NLRC, when the law itself does not expressly provide for the grant of such powers.

x x x x x x x x.

Please provide us immediately with the death certificate/post mortem report/police report pertinent to above as proof of death and cause thereof."

Nonetheless, and apprehensive of the adverse repercussions which may ensue on account of its non- compliance with the directive, petitioner, on September 29, 2000, advanced under protest the costs for the repatriation of the remains of the late Manny dela Rosa Razon.

Thereafter, petitioner went to this Court via the instant petition for certiorari, posing, for Our consideration, the sole issue of -

"WHETHER OR NOT SECTIONS 52, 53, 54 AND 55 OF THE OMNIBUS RULES AND REGULATIONS IMPLEMENTING THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. 8042), ISSUED BY DFA AND POEA, WHICH POEA SUMMARILY ORDERED THE HEREIN PETITIONER TO COMPLY VIZ-A-VIZ THE PAYMENT IN ADVANCE OF THE EXPENSES FOR THE REPATRIATION OF THE REMAINS OF A DECEASED WORKER-TRAINEE WHO, AT THE TIME OF HIS DEATH, HAS NO EXISTING EMPLOYMENT (DISPATCHING) CONTRACT WITH EITHER SAID PETITIONER OR HIS FOREIGN PRINCIPAL AND NO VALID VISA OR IS NOT WORKING WITH THE FOREIGN PRINCIPAL TO WHICH PETITIONER DEPLOYED HIM, IS ILLEGAL AND/OR VIOLATIVE OF DUE PROCESS SUCH THAT POEA ACTED WITHOUT [OR IN] EXCESS OF ITS

JURISDICTION AND/OR IN GRAVE ABUSE OF DISCRETION IN  
ISSUING SAID ORDER TO PAY SAID EXPENSES."<sup>[2]</sup>

On 4 October 2001, the Court of Appeals rendered the Decision which is now the subject of the present petition. The dispositive portion of the Court of Appeals' Decision states:

WHEREFORE, for lack of merit, the instant petition is *DENIED* and is accordingly *DISMISSED*.<sup>[3]</sup>

In dismissing the petition for *certiorari*, the Court of Appeals stated that petitioner was mainly accusing the Philippine Overseas Employment Administration (POEA) of grave abuse of discretion when it ordered petitioner to pay, in advance, the costs for the repatriation of the remains of the deceased Manny dela Rosa Razon.

The Court of Appeals ruled that the POEA did not commit any grave abuse of discretion as its directives to petitioner were issued pursuant to existing laws and regulations.<sup>[4]</sup> It likewise held that a petition for *certiorari*, which was the remedy availed of by petitioner, is not the proper remedy as the same is only available when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."<sup>[5]</sup> Section 62 of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 or Republic Act 8042 ("Omnibus Rules") states that "the Labor Arbiters of NLRC shall have the original and exclusive jurisdiction to hear and decide all claims arising out of employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages, subject to the rules and procedures of the NLRC." There is, therefore, an adequate remedy available to petitioner.

Lastly, the Court of Appeals declared that it could not strike down as unconstitutional Sections 52, 53, 54, and 55 of the Omnibus Rules as the unconstitutionality of a statute or rules may not be passed upon unless the issue is directly raised in an appropriate proceeding.<sup>[6]</sup>

In the present recourse, petitioner submits the following issues for our consideration:

1. The Court of Appeals erred in the appreciation of the issue as it mistakenly considered, in dismissing the petition before it, that petitioner is contesting the compliance and conformity of the POEA directives with Sections 52, 53, 54, and 55 of the Omnibus Rules and Regulations implementing in particular Section 15 of RA 8042;
2. The Court of Appeals, in dismissing the petition, again erred in ruling that constitutional questions cannot be passed upon and adjudged in a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure;
3. The Court of Appeals erred in not holding that, under the facts of the case that gave rise to the petition before it, the same sections of the said rules and regulations are illegal, invalid and/or violative of the right of petitioner to due process of law and, therefore, the